SOON NAM CO. LTD. v. ARCHYNAMICS ARCHITECTS

[C.A. (Wee Chong Jin C.J., Kulasekaram and Choor Singh JJ.) December 28, 1978]
[Singapore — Civil Appeal No. 52 of 1978]

Architects — Professional Charges — Singapore Institute of Architects scale of Professional Charges — Contract providing for terms to be in accordance with said scale — Whether architects entitled to remuneration for partial work done — Scope of clause 3(ii) of Scale.

Contract — Breach by plaintiffs — Plaintiffs claiming payment for work partially done — Quantum meruit — Whether entitled to.

The plaintiffs/respondents a firm of architects claimed against the defendants, a firm of property developers, the sum of $152,000 being ⅓ of 8% of the estimated costs of a building project estimated to cost $5.7 million. In the alternative they claimed the said sum of $152,000 upon *quantum meruit* for work done for a period of three months prior to the drawing up of the condominium scheme and preparation of the necessary plans. The plaintiffs carried out searches with the relevant government departments, and had discussions with these departments and planning authorities. They submitted draft plans (already approved by the defendants) to the Planning Department. These plans were sufficient for the Planning Department to give "in principle" approval. The plans were however returned, without having been approved or disapproved by the Planning Department. The plaintiffs were requested to re-submit the plans. It was at this stage that the plaintiffs terminated the contract. The plaintiffs did not give the defendants reasonable notice as required under the contract. The contract provided that the terms of the engagement shall be in accordance with the Singapore Institute of Architects Conditions of Engagement and Scale of Professional Charges. The plaintiffs relied on clause 3(ii) of the said scale which allows the architects payment in stages and in cases of partial services performed for "... preparing preliminary drawings and particulars sufficient to enable applications to be made for planning approval, and for 'in principle' approval in connection with any specific by-law...." The learned Judge allowed the plaintiffs' claim and awarded them $76,000. The defendants appealed and the plaintiffs cross-appealed.

Held, dismissing the defendants' appeal and allowing the plaintiffs' cross-appeal: (1) the plaintiffs were entitled to recover payment from the defendants for the work done on their behalf as provided by the contract and in accordance with the Singapore Institute of Architects Conditions of Engagement and Scale of Professional charges. Whether or not the work done by the architects was useful or beneficial to the other party had no bearing on the question of payment for the services rendered by the architects;

(2) the plaintiffs' breach of their contract, which was the main defence of the defendants, entitled the defendants at common law to claim damages from the plaintiffs. The defendants could have counterclaimed for damages for the said breach but they had failed to do so;

(3) the trial judge misapplied the provisions of clause 3(ii) of the Singapore Institute of Architects Scale of Professional charges. "In principle" approval is not a requirement for the application of clause 3(ii). What is required is that the plans should be sufficient for "application to be made for planning approval and for 'in principle' approval."

CIVIL APPEAL.

Datuk P. Suppiah for the appellants.

Tan Jin Hwee for the respondents.

Cur. Adv. Vult.

Choor Singh J. (delivering the judgment of the Court): The plaintiffs who are a firm of architects and are the respondents in this appeal claimed from the defendants, a firm of property developers, the sum of $152,000 being 1/3 of 8% of the estimated costs of a building project estimated to cost $5.7 million. In the alternative they claimed the said sum of $152,000 upon a *quantum meruit*. The defendants denied liability on the ground that they had not terminated the contract between the parties and that it was the plaintiffs who were in breach of their contract. The defendants contended further that they had not derived any benefit from the work done by the plaintiffs and that therefore there were no grounds for a *quantum meruit* claim.

At the trial in the High Court before D'Cotta J. both parties called evidence. It is clear from the evidence that it was the plaintiffs who had terminated the contract. The partners of the firm had dissolved their partnership and some of the partners had formed a new partnership which had offered their services to the defendants who had rejected the offer. Thereupon the plaintiffs terminated the contract. It is also clear that although the conditions of engagement provided for the termination of the contract at any time by either party upon reasonable notice being given, the plaintiffs had failed to give such notice and were therefore in breach of their contract.

The contract provided that the "terms and conditions of engagement shall be in accordance with the Singapore Institute of Architects Conditions of Engagement and Scale of Professional Charges".

The Singapore Institute of Architects scale of professional charges provides:—

"3. MODE AND TIME OF PAYMENT AND PARTIAL SERVICES

The architect is entitled to payment in stages as follows and in cases where the architect performs partial services for any reason including the abandonment, deferment, substitution or omission of any period and or works, or part thereof, or if the services of the architect are terminated, the fees in respect of the services performed shall be as follows:—

(i) For taking client's instructions and preparing preliminary sketch designs to illustrate possibilities of a site or cost of a scheme the fee shall be on quantum meruit.

(ii) For taking client's instructions, preparing sketch designs sufficient to indicate the architect's interpretation of the client's instructions, and preparing preliminary drawings and particulars sufficient to enable applications to be made for planning approval, and for "in principle" approval in connection with any specific by-law, the fee shall be one-third of the appropriate percentage due on the estimated cost of such works.

(iii) xxx xxx

(iv) xxx xxx

(v) xxx xxx

(vi) xxx xxx

(vii) xxx xxx

(viii) In cases where the architect performs partial services for any reason including the abandonment, deferment, substitution or part thereof, of if the services of the architect are terminated, the fees in respect of the services performed shall be as set down for the various stages of work as set out above. Should the work performed fall between the stages of work set out above, then the fee chargeable shall be the percentage chargeable for the stages at the higher level...."

The evidence shows that the plaintiffs did a considerable amount of work for a period of three months prior to the drawing up of the condominium scheme and preparation of the necessary plans. They carried out searches with the Sewerage Department, Drainage Department, the Public Utilities Board, Public Works Department and other Government Departments to determine whether or not the essential services were

available at the site of the proposed development. They also had discussions with these Departments and the planning authorities. Draft plans were drawn up and later finalised after the defendants had approved them. These plans were submitted to the Planning Department and were sufficient for the Planning Department to give "in principle" approval. The planning authorities however returned the plans without approving or disapproving them. The plaintiffs were requested to re-submit the plans. It was at this stage that the contract was terminated.

On this evidence, D'Cotta J. made the following finding: —

"The architects are basing their claim under clause 3(ii). The work done by the architects is set out in AB15. Clause 3(ii) envisages 'in principle' approval being obtained which will entitle the architects to a fee of one-third of the appropriate percentage due on the estimated cost of such works. The architects' proposal dated 13th July 1973 (Exhibit AB15) addressed to the Chief Planner was not even considered by the Planning Department (vide Exhibit AB24, para. 4). In AB46 dated 18th November 1974, the Permanent Secretary (National Development) requested the developers to resubmit their plans for consideration. From the evidence I find that the provisions of clause 3(ii) had not as yet been complied with by the architects.

In my judgment the architects are entitled to the fees for work done by them on a quantum meruit basis i.e. up to the date of termination of the contract: in other words under clause 3(i) which is the first stage and the bill originally submitted by them — AB15 and again on 10th June 1974 (AB53) — is for progress fees for services rendered to date. The italics words are the architects' own words in para. 1 of AB38. There will accordingly be judgment for the plaintiffs for the sum of $76,000 and costs."

The defendants now appeal against the judgment entered against them and maintain that the plaintiffs' claim should have been dismissed. The plaintiffs have cross-appealed and they contend that the judgment should have been entered for $152,000 being one-third of eight per cent of the estimated cost of the project. They claim that they are entitled to this sum under clause 3(ii) of the Singapore Institute of Architects Scale of Professional Charges.

Before us counsel for the defendants repeated the submissions he made in the court below, namely, that it was the plaintiffs who were in breach of the contract and that as the work done by them was of no beneficial use to the defendants the claim of the plaintiffs should have been dismissed. On the other hand counsel for the plaintiffs submits that even though the plaintiffs were in breach of their contract they were nevertheless entitled to claim remuneration for the partial services that they had rendered and that such remuneration must be calculated in accordance with the Singapore Institute of Architects Scale of Professional Charges.

We are unable to accept the submission of counsel for the defendants that the plaintiffs' claim should have been dismissed on the ground that they were in breach of their contract. The contract specifically provided that "the terms and conditions of engagement shall be in accordance with the Singapore Institute of Architects Conditions of Engagement and Scale of Professional Charges". Clause 3 of the Singapore Institute of Architects Conditions of Engagement and Scale of Professional Charges specifically provides that "the architect is entitled to payment in stages. . ." and also provides that where, "for any reason" including if the services of the architect is terminated, the architect performs only partial services, he is nevertheless entitled to payment in accordance with the scale laid down therein. Whether or not the work done by the architect is useful or beneficial to the other party has no bearing on the question of payment for the services rendered by the architect. The plaintiffs are therefore entitled to recover payment from the defendants for the work done on their behalf.

The plaintiffs' breach of their contract, which is really the main defence of the defendants, entitled the defendants at common law to claim damages from the plaintiffs. The defendants could have counterclaimed for damages for the said breach but they have failed to do so.

In our opinion the trial judge misapplied the provisions of clause 3(ii) of the Singapore Institute of Architects Scale of Professional Charges. "In principle" approval is not a requirement for the application of clause 3(ii). What is required is that the plans should be sufficient for "application to be made for planning approval and for 'in principle' approval". The plaintiffs had clearly complied with this requirement and they had in fact submitted plans for "in principle" approval. In any case, the work done by them was in excess of that required under clause 3(i) and by virtue of the provisions of clause 3(viii) they were entitled to payment under clause 3(ii) i.e. one-third of eight per cent of the estimated cost of the project. The cost of the project was estimated by the plaintiffs at $5.7 million. This figure was not challenged at the trial. The plaintiffs are therefore entitled to $152,000 being one-third of eight per cent of $5.7 million.

The appeal by the defendants is dismissed with costs. The cross-appeal by the plaintiffs is allowed. There will be judgment for the plaintiffs in the sum of $152,000 and costs as taxed.

Appeal dismissed;
Cross-appeal allowed.

Solicitors: *P. Suppiah & Co.; Tan Jin Hwee & Co.*

YEO GEK LANG v. ALICE WEE

[C.A. (Wee Chong Jin C.J., Chua and Kulasekaram JJ.) January 9, 1979]

[Singapore — Civil Appeal No. 3 of 1978]

Land Law — Sale of property — Offer to purchase for $164,000 — Refusal of purchaser to complete purchase — Whether negotiations amounted to a contract — Claim for breach of contract — Damages awarded — Appeal.

Solicitors — Sale of property — Agency — Solicitors not agent of clients to conclude contract for them in absence of specific authority.

Agency — Solicitors — In absence of specific authority solicitors not agents of clients to conclude contract for them.

This is an appeal from the decision of D'Cotta J. (see [1978] 1 M.L.J. 196) in the court below. The property in question was No. 95 Jalan Senang. The defendant/appellant offered to purchase it from the respondent for $164,000 subject to contract. The appellant paid the 10% deposit to her own solicitors. Negotiations as to the terms of the contract